

## Article - Natural Resources

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§8-716.1.

(a) The dealer shall collect the excise tax for the Department. For collecting and remitting the tax, a dealer may keep 1.2% of the gross tax the dealer collects. A dealer may not keep 1.2% of any gross tax amounts which were not forwarded to the Department within 30 days of collection, unless a waiver has been approved by the Secretary.

(b) If the Department finds that a dealer has forwarded less than the amount of tax due and does not have adequate records or has incorrect records of sales or resales of new or used vessels and that the amount of excise tax collected for the Department on these sales cannot be determined accurately, the Department shall determine the taxable sales of the dealer for any period involved and compute the tax from the best information available. The computation shall be prima facie correct. However, if any dealer fails to keep any record of sales of vessels, the Department may determine the tax due to the Department by using a factor developed by surveying the business of the dealer, including any records available, or by surveying other taxpayers of the same type or otherwise compute the amount of tax due. This computation shall be prima facie correct.

(c) As provided in subsection (b) of this section, if the Department determines the taxable sales and computes the tax due, the Department shall levy against the dealer a deficiency assessment consisting of a penalty of 10%, plus interest at a rate of 1.5% per month, or fraction of a month, from the time the tax was due until paid. All amounts received from any dealer under this subsection shall be credited first to penalty and interest accrued and then to tax due.

(d) (1) If a person obligated to pay the tax fails to pay the tax when due, there shall be assessed against the person, in addition to the tax due, a penalty of 10% plus interest at the rate of 1.5% per month or fraction of a month from the time the tax was due until paid. This penalty and interest may be waived by the Secretary if, within 30 days from the date of mailing of the notice of assessment, the taxpayer files an appeal showing cause why the tax is not paid when due. Any amounts received from any dealer or owner under this subsection shall be credited first to penalty and interest accrued and then to tax due.

(2) If the failure to pay the tax is due to an attempt to defraud, then the penalty shall be, in lieu of the penalty more specifically provided for under paragraph (1) of this subsection, 100% of the tax due plus interest at the rate of 1.5% per month or fraction of a month from the time due until paid.

(e) (1) If the Department finds that any dealer or other person liable for the tax imposed by this subtitle intends to depart from the State, remove the dealer's or other person's property from the State, conceal the dealer or other person or their property in the State, or do any other act tending to prejudice or render wholly or partly ineffectual proceedings to collect the tax, the Department shall notify the dealer or other person of its findings and demand an immediate payment of the tax, interest, and penalty.

(2) If the amount of tax, interest, and penalty specified in the notice of jeopardy assessment is not paid within 10 days of the service of the notice, the Department may bring any action that the Department considers advisable for the prompt collection of the tax.

(3) If, within 10 days of the service of the notice, the person liable for the tax files with the Department satisfactory evidence that the person is not in default in paying the tax or that the person will duly return and pay the tax, then the tax is not payable before the time otherwise required by this section. However, in each case, the findings of the Department as to the responsibility of the person liable for the tax are final and conclusive.

(f) (1) The tax imposed by this subtitle and all increases, interests, and penalties on the tax shall become, from the time due and payable, a personal debt of the person liable to pay the tax to the State of Maryland. An action may be brought at any time within 3 years from the time the tax shall be due and payable by the Department in the name of the State to recover the amount of any taxes, penalties, and interest due under the provisions of this subtitle, but if there is proof of fraud or gross negligence, there shall be no limitation of the period in which the action may be brought. Proof of negligence amounting to 25% or more of the tax due shall be prima facie evidence of gross negligence.

(2) The tax and all increases, interests, and penalties on the tax shall be a lien upon all the property, real or personal, of any person liable to pay the tax to the State from and after the time when notice has been given that the tax has become due and payable as provided in this section. Notice of the lien shall be filed promptly by the Department with the clerk of the circuit court of the county in which the property is located or Baltimore City. Each clerk of court accurately and promptly shall record and index all the notices of lien filed with the clerk by the Department and shall enter the lien in the judgment docket of the court, stating the name of the delinquent taxpayer, the amount of the lien and the date of the lien. The lien provided for in this section shall have the full force and effect of a lien of judgment. Unless another date is specified by law, the lien arising at the date of nonpayment, as in this section specified and provided for, shall continue with the same force and effect as a judgment lien. Any judgment lien on personal property is not effective as against an

innocent purchaser for value, unless the personal property has been levied upon by an officer of a court.

(g) If a person or entity liable for the excise tax and for the interest and penalties of the tax under this subtitle is a corporation or limited liability company or limited liability partnership, including a limited partnership registered as a limited liability limited partnership, personal liability for the excise tax and for the interest and penalties of the tax extends to:

(1) In the case of a corporation:

(i) The president, vice president, or treasurer of the corporation; and

(ii) Any officer of the corporation who directly or indirectly owns more than 20% of the stock of the corporation;

(2) In the case of a limited liability company:

(i) If the limited liability company does not have an operating agreement, all members; or

(ii) If the limited liability company has an operating agreement, those individuals who manage the business and affairs of the limited liability company; and

(3) In the case of a limited liability partnership:

(i) If the limited liability partnership does not have a written partnership agreement, all general partners; or

(ii) If the limited liability partnership has a written partnership agreement, those individuals who manage the business and affairs of the limited liability partnership.

(h) A member of a limited liability company does not manage the business and affairs of the limited liability company under subsection (g) of this section solely by doing one or more of the following:

(1) Consulting with or advising the individuals who manage the business and affairs of the limited liability company;

(2) Directing the management of the limited liability company in the same manner as a director of a corporation directs the management of a corporation; or

(3) Voting on any matter required to be voted on by the members of the limited liability company, including but not limited to:

(i) The approval or disapproval of amendments to the operating agreement;

(ii) The termination and winding up of the limited liability company;

(iii) The sale, exchange, lease, mortgage, pledge, or other transfer of a material portion of the assets of the limited liability company;

(iv) The incurring of indebtedness by the limited liability company other than in the ordinary course of its business;

(v) A change in the nature of the business of the limited liability company;

(vi) The expulsion or admission of a member;

(vii) The appointment or discharge of a manager;

(viii) The merger of the limited liability company with or into any other entity; or

(ix) Any matter related to the business of the limited liability company not otherwise enumerated in this subsection that the operating agreement states may be subject to the approval or disapproval of the members.

(i) The possession or exercise of powers other than those contained in subsection (h) of this section by a member does not necessarily constitute management by the member of the business or affairs of the limited liability company.

(j) The same rules and exceptions applicable to a member of a limited liability company set forth in subsections (h) and (i) of this section shall be applicable to individuals and members of limited liability partnerships.

(k) Notwithstanding any other provision of law, the Department may not collect or enforce any liability for the Maryland use tax that was incurred before July 1, 1986 on a vessel owned by a person who at the time the liability was incurred:

(1) (i) Was licensed by the Department to catch, for commercial purposes, finfish, eels, crabs, conch, soft-shell clams, hard-shell clams, oysters, or any other fish; and

(ii) Used the vessel for any of the commercial fishing purposes described in item (i) of this item; or

(2) (i) Was licensed as a commercial fishing guide under the provisions of § 4-210 of this article; and

(ii) Used the vessel as a charter boat with a license as provided in § 4-745(d)(2) of this article.

(l) An assessment of tax under this subtitle is prima facie correct.

(m) (1) A dealer or other person liable for the tax imposed by this subtitle may not:

(i) Willfully fail to collect the tax;

(ii) Willfully fail to remit the tax;

(iii) Willfully make any false statement or misleading omission with regard to the tax;

(iv) Willfully fail to keep records in accordance with this subtitle and any regulations pursuant to this subtitle; or

(v) Willfully evade payment of the tax by any means.

(2) Any person violating this subsection is guilty of a misdemeanor and upon conviction is subject to the penalties set forth in § 8-739 of this subtitle.

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